

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
Voice/FAX: (425) 259-3144
e-mail: jegalt755@gmail.com

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CITY OF LYNNWOOD
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MEMORANDUM

To: ✓ Lynnwood City Council
Lynnwood Planning Commission

CC: Mayor Nicola Smith
Paul Krauss, Community Development

From: John E. Galt, Hearing Examiner 

Date: January 20, 2016

Subject: Annual Report for 2015

The Lynnwood Municipal Code provides for an annual report from the Hearing Examiner to the City Council and Planning Commission:

The Examiner shall report in writing to and meet with the Planning Commission and City Council at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances, and any amendments to City ordinances or other policies or procedures which would improve the performance of the Examiner process. Such report shall include a summary of the Examiner's decisions since the last report.

[LMC 2.22.170] This Report covers the cases which I decided during 2015. The report is divided into two parts: Hearing Activity and Discussion of Issues. I am available to meet at a time of mutual convenience with Council and/or Planning Commission at your request.

Hearing Activity

The pace of development activity requiring an open record pre-decision hearing remained at 2014 levels: I conducted five hearings. One of those hearings involved two separate appeals filed by the same party.

Last year's cases are listed in the order they were decided on the attached table. "CUP" means "Conditional Use Permit;" "OK" means "Approve;" "Bus Lic Rev Ap" means "Business License Revocation Appeal;" "NOV Ap" means "Notice of Violation Appeal;" "VAR" means "Variance;" "Okw/c" means "Approved subject to conditions;" "EPF" means "Essential Public Facility;" and "Pre Plt" means "Preliminary Subdivision."

Discussion of Issues

While the Paradise Espresso appeal hearing would in all fairness have to be described as contentious, it did not present any code inadequacies or weaknesses.

Applegate Division II involved some exceptionally tall retaining walls along one exterior property line. The Municipal Code does not contain any limitations on such walls, so there was no basis for me to reject them. I did impose special conditions in an effort to “soften” the visual impact of the walls from adjoining properties.

As developers seek to develop more steeply sloping land, one can expect more retaining walls to be part of their proposals. Developers say that purchasers want relatively flat lots. To get flat lots on sloping land you have to terrace the land; terracing frequently leads to retaining walls. In addition, retaining walls are sometimes used to facilitate sewer service to low portions of development sites.

If the height or visual character of retaining walls in residential neighborhoods is of concern to the City Council, then it may wish to explore regulatory changes.

Lynnwood Hearing Examiner Decisions: 2015

File #	Applicant	Project Name	Type	Acres	Lots	Decision	Decision Date	Recon.	Recon. Date
CUP-001937-2014	Lowes Home centers, LLC		CUP			OK	02/19/2015		
015483	Tagle Investments, LLC	Paradise Espresso	Bus Lic Rev Ap			Deny	06/08/2015		
APPL-002200-2014	Tagle Investments, LLC	Paradise Espresso	NOV Ap			Deny	06/08/2015		
VAR-002898-2015	Mercedes Benz of Lynnwood (Halata)	Sprinter Annex variances	Var	1.70		OKw/c	07/24/2015		
CUP-02922-2015	Evergreen Recovery Centers		CUP/EPF			OKw/c	08/19/2015		
PLT-002851-2015	McCann Meadows, LLC	Applegate Division II	Pre Plt	4.46	16	OKw/c	09/21/2015		

**City of Lynnwood
2015 Hearing Examiner Decision Summaries**

Applicant:	Lowes Home Centers, LLC
File No(s):	CUP-001937-2014
Hearing/Decision dates:	February 12, 2015/February 19, 2015
Location:	South side of 196 th Street SW, east of Poplar Way
Request:	The Conditional Use Permit (CUP) process was used as a vehicle to terminate an old "Special Use Permit" (SUP), since the SUP process has been eliminated from the City code, and to obtain setback relief for a commercial monument sign.
Issue(s):	This application involved no controversy or citizen interest. The SUP was superfluous: It had been rendered obsolete by code changes since its approval. Site topography made compliance with sign setback regulations problematic.
Decision:	Terminate the old SUP; Grant the setback relief to allow a monument sign to be erected at the property line
Reconsideration:	None requested.
Regulations, policies, or procedures identified for revision/clarification:	None.

Appellant:	Tagle Investments, LLC
File No(s):	015483 and APPL-002200-2014
Hearing/Decision dates:	June 3, 2015/June 8, 2015
Location:	17211 Highway 99 (Paradise Espresso)
Request:	Tagle Investments appealed from a Notice of Business License Revocation issued by Administrative Services and a Notice of Violation of the zoning code issued by Community Development.
Issue(s):	Community Development and Administrative Services charged that Paradise Espresso was operating as an "adult establishment" in violation of City business licensing regulations and in a location where such activities are not allowed under the zoning code. Tagle Investments did not deny the nature of the activities, but argued that the LLC's managing member (Jonathan Tagle) was unaware of the problems and that the City had violated Tagle Investments' procedural due process rights.
Decision:	Appeals denied; Business license revocation sustained; Zoning violation sustained. The Examiner did not find Tagle's denial of knowledge to be credible. The Examiner concluded that the City had followed required procedures correctly in revoking Tagle Investments' business license and in charging it with zoning code violations.
Reconsideration:	None requested
Regulations, policies, or	None.

procedures identified for revision/clarification:	
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Applicant:	Mercedes Benz of Lynnwood (Halata)
File No(s).:	VAR-002898-2015
Hearing/Decision dates:	July 23, 2015/July 24, 2015
Location:	17121 Highway 99
Request:	1) Reduce landscape width from 20 feet to 6 feet for a 107 foot section of an access drive within a 30 foot wide panhandle; and 2) reduce sign side yard setback from 10 feet to 4 feet near the west end of the access panhandle
Issue(s):	This was a straight-forward re-do of an identical pair of variances granted to a prior owner in 2007. The variances are necessary because the 30 foot wide panhandle is insufficient to contain the required 20 foot wide fire lane along with landscaping and sign setbacks. The reductions requested and granted were the minimum necessary to fit everything into the available panhandle width.
Decision:	Grant subject to conditions
Reconsideration:	None requested
Regulations, policies, or procedures identified for revision/clarification:	None

Applicant:	McCann Meadows, LLC
File No(s).:	PLT-002851-2015
Hearing/Decision dates:	September 10, 2015/September 21, 2015
Location:	4605 212 th Street SW
Request:	<i>Applegate Division II</i> : 16-lot preliminary single-family residential subdivision
Issue(s):	The primary issues in this in-fill subdivision were: grading and the effect of cut bank retaining walls on adjacent on-site sewage disposal systems; and the visual effect of large (up to 17 feet tall) fill retaining walls. The Examiner imposed special conditions relating to both issues: Several alternative protections for the adjacent sewage systems were provided; the walls were required to have architectural faces with evergreen vines planted at their bases.
Decision:	Approve subject to conditions
Reconsideration:	
Regulations, policies, or procedures identified for revision/clarification:	None